

DEPOSITIONS OF RULERS IN THE LATER MIDDLE AGES: ON THEORY OF THE "USELESS RULER" AND ITS PRACTICAL UTILIZATION*

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I

The fact that in late medieval times more or less changes of rulers by force increased in nearly all European kingdoms, may indeed be read as a symptom of change in kingship as well as in the basic order of lordship. It would be premature, however, to conclude that, concerning kingship, there existed a fundamental crisis of legitimacy. One argument against this view is the amount of pains that were taken to make depositions look less irregular, and to make them appear instead as procedures that followed fixed and prescribed rules.

Everybody who thoroughly inquires into the history of political theories among the learned jurists of the late Middle Ages, will judge more carefully about the relationship between political action and scholarly conceptions of laws than constitutional historians have often done. It is only recently, at least in Germany, that the view has begun to be accepted that the doctrines of the Legists and Canonists concerning the rights of the crown, the coronation oaths, inalienability and the *Respublica* as a corporation, that these doctrines represent more than just theories at one remove from reality.

The task remains to show, at what junctions and in what functions which person helped to transform those doctrines into constitutionality. If one takes for a moment the example of the Great Ecclesiastical Schism since 1378, and the role that the conciliar theories played in it, one's

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attention is at once directed at the innovative potential that lay in those situations of crisis.

II.

The renowned *doctor utriusque iuris* Baldus de Ubaldis from Perugia (1320/27 - 1400) was often consulted for his expert's opinion from Portugal too it happened once more when the Portuguese King John I (1385-1433) rised a case by depriving the members of the Ponzano family of the dignity of admiralty, which this family could lay hereditary claim to on the grounds of a privilege by King Dinis (1279-1325) to its ancestor Manuel Ponzano. As John had become king through election by the estates of Portugal, he did not consider himself bound to his predecessor's orders. This is why Baldus begins his *consilium* with a discussion of hereditary and elective monarchy. The example of the Roman empire, as the prototype of a monarchy by election, led him then to expound on the principles of the canonistic-legalistic theory of rulership, with its division into ruler's person and *dignitas*, and the resulting consequence of the inalienability of crown rights. If a ruler's act impinges upon the *dignitas* of the realm, this act will equally bind his successors. For neither *dignitas* nor *respublica regni* can die. One could argue, therefore, that two persons come together in the king, a real physical person and what Baldus calls a *quoddam intellectuale*, a significative person. The physical person of the king is to be seen as the organ of his public person which is a merely intellectual one⁽¹⁾.

In the course of his exposition, the jurist refers several times to two papal decretals: to "*Intellecto*" by Pope Honorius III of 1220, and to "*Grandi*" by Pope Innocent IV of 1245. These papal decisions set the pace for the view that kingship was a *honor perpetuus* and not a *honor ad tempus*. The consequences of this canonistic teaching particularly touched upon the case of the useless king: he proved to be a *rex inutilis* or *negligens* by offending against the *dignitas regalis*, esp. by illicit alienation of crown

⁽¹⁾ Baldus de Ubaldis, *Consilia III*, Venezia 1575, cons. 159, fo.45va f. cf. H.G. Walther, *Die Legitimität der Herrschaftsordnung bei Bartolus von Sassoferrato und Baldus de Ubaldis*. In: *Rechts- und Sozialphilosophie des Mittelalters*, hg. v. E. Mock u. G. Wieland, Frankfurt/M. 1990, 115-139/,h.:129f.,

rights. But the comments on the decretal "*Intellecto*", made by canonists of the 13th century, sedulously avoided the deduction of an absolute, and therefore unrealistic, prohibition of alienation.

By his decretal "*Grandi*", Pope Innocent IV had terminated that Sancho II of Portugal as a proven *rex inutilis* should have his brother Alfons appointed curator with the right to succession. The pope here obviously proceeded in a different manner from that adopted with Emperor Frederick II, whom he had deposed at the Council of Lyons that same year. In his own comment on his decretal "*Ad apostolica sedis*", Pope Innocent — who was one of the most famous canonists of his century — emphasised, what special validity he saw in the regulations of this deposition sentence. At the same time, he justified the different procedures in both cases with the difference between monarchy by inheritance and by election. Hereditary kings, as well as other hereditary rulers, ought not be deposed because of their everlasting honour. This doctrine was then resumed by the canonist Johannes Andreae as a "standing rule" in his standard glossary of *Grandi*, dating from the very beginning of the 14th century; he added, however, that the deposition of a hereditary king was not generally excluded by this⁽²⁾.

As the expert's opinion by Baldus in the Portuguese quarrel shows, learned jurists of the late 14th century continued to emphasise the difference between hereditary and elective monarchy. But it was only Baldus who had taken the theory of transpersonal rulership a step further to a theory of two separate persons in the king. But in general, the traditional impediment of *dignitas regis* and *honor coronae* against the deposition of a real ruler was now somewhat diminished by jurists. While Innocent IV had legitimized the deposition of Frederick II with the charge

⁽²⁾ Sinibaldus Fliscus (= Innocenz IV.), *Commentaria super quinque libros decretalium*, Frankfurt/M. 1570, ad. "*Ad apostolicae*" (Coll. III, 23 = VI^o 2.14.2), fo. 396 v; ad "*Grandi*" (Coll. III, 27 = VI^o 1.8.2.), fo. 96v; Johannes Andreae, *Glossa ordinaria*, in: *Liber Sextus*, Lyon 1533, ad "*Ad apostolicae*", col. 203ff.; ad "*Grandi*" col. 114 r.; P. Riesenberger, Inalienability of sovereignty in medieval political thought, New York 1956; H. Hoffmann, die Unveräußerlichkeit der Kronrechte im Mittelalter, in: *Dt. Archiv f. Erf. d. MA* 20 (1964), 309-474; H.G. Walther, *Imperiales Königtum, Konziliarismus und Volkssouveränität*, München 1976, 112- 599.; E. Peters, *The Shadow King, Rex in utilis in medieval law and literature 751-1327*, New Haven/London 1970.

— derived from the legislation against heresy — of persistently committed sins and crimes he justified the appointment of a curator in the Portuguese case with *inutilitas* and *negligentia* respectively of the hereditary king there.

Now, it was the consequence of their transpersonal theory that the jurists of the 14th century obliterated the difference of reasons in both cases. Instead, they found a connection between them in the kings' culpable failure, deposition being thus possible in both cases, too. For from such a behaviour, canonistic doctrine had always deduced the necessity of deposing a prelate or, for that matter, any other holder of jurisdiction⁽³⁾.

III.

It is in the light of such theoretical considerations that we will view now the deposition of four kings in Germany and England during the Late Middle Ages.

In 1298, the Archbishop of Moguntia stylised the text of the deposition charter for the German King Adolf of Nassau following almost word for word the model provided by Innocent IV. Thus, the accusations to a large extent repeat the charges brought forward against Frederick II. At the same time, King Adolf is declared *insufficiens et inutilis* for his office. The ruler's crimes are thus seen as the cause from which a culpable unsuitability for the kingly office is deduced, which inevitably leads to a deposition.

By so closely imitating the argument of the papal deposition of 1245, the electors were bound to find themselves in a conflict of competence with papacy. This especially referred to their speaker, Archbishop Gerhard II of Moguntia, of course. For the first time since the double election of

⁽³⁾ O. Hageneder, Das päpstliche Recht auf Fürstenabsetzung, seine kanonistische Grundlegung (1150-1250), in: Archivum Hist. Pontificiae 1 (1963), 53-95; Peters, Shadow King (n.2); L. Fowler, Innocent's uselessness in civilian and canonist thought, in: Zs. f. Rechtsgesch., kanon. Abt. 58 (1972), 107-161; F. Kempf, Die Absetzung Friedrichs II. im Lichte der Kanonistik, in: Probleme um Friedrich II. (Vorträge u. Forsch. 16), Sigmaringen 1974, 345-360.

1257, the five conspiring electors acted as a group, even though this group did not yet encompass all of the electors; and from their privileged position as sole electors of the Roman king, they deduced a co-responsibility for the Empire. It is true that in 1278 Pope Nicholas III had conceded a similar point by giving the electors the titles of "pillars and wardens of the emperor's rule"; but, of course, the pope had never meant this to imply the competence for the deposition of kings⁽⁴⁾.

The fact that after the deposition of Adolf, the conflict with Pope Boniface VIII continued, clearly demonstrated the incompatibility of the electors positions with the papal claim to special privileges in relation to the German king. This claim, of course, resulted from the German king's position as future emperor. It did not help much that Gerhard II had pointed to his office as archchancellor of the Roman Empire in the invitation to the meeting of Electors. After all, the institution of the electors was regarded by the papal curia as its own creation. When Gerhard II later sought a compromise with Rome, he retrospectively claimed an emergency, in which he, as the archchancellor, had been forced to act. But on the whole, the fact of the sheer imitation of the papal procedures of 1245 demonstrates that the electors lacked an independent legal basis for their action in 1298⁽⁵⁾.

In the hereditary realm of England, the procedures for the dethronement of Edward II in 1327 took a different turn. The opposing faction of barons did not consider a formal deposition of the king. According to canon law, one needed a *superior* for a deposition. If there was no secular *superior*, the pope could depose a king on the grounds of culpable negligence. At least this is what the *Glossa ordinaria* of the decretal *Grandi* (written by Johannes Andreae) said. A barons' appeal to the pope, however, was out of the question, considering the whole constitutional reality of England. After all, in 1399, King Richard II was charged by his opponents violation of English custom by having entertained contacts to the Roman curia.

⁽⁴⁾ Sentence-charter in: MGH Const. III, no. 589 (549ff).

⁽⁵⁾ Cf. Walther, *Imperiales Kgt.* (n.2), 112ff.; H. Thomas, *Deutsche Geschichte des Spätmittelalters 1200-1500*, Stuttgart/Berlin/Köln/Mainz 1981, 115ff. (Boniface quarreling with the electors).

On the other hand, the estates that assembled in London in 1327, could hardly call themselves the legitimate *superior* of the king, even if the philosopher William of Ockham — a little later — cast them in exactly that role. This is why their noble leaders preferred to opt for an enforced resignation of the king in favour of his successor, under threat of claiming otherwise their feudal right of breaking fealty.

The accusations, which are headed under 6 items in the official declaration of the opposing estates, read almost like a list of arguments from the canonistic doctrine of inutility. Appropriately, the contemporary ecclesiastical chronicles of England report Edward's deposition in the canonistic terms too. The official declaration of the opponents ends with stating the king's insufficiency to rule, irremediable, because the king had proven himself incorrigible. According to canonistic teaching, the charges of having offended against the prohibition of alienation, which was part of his coronation oath, could also have led to the solution of appointing the successor as curator. But the political will of the oppositional estates was aimed at total deposition. This is why they motivated and justified their demand for a resignation by stating that the king had behaved in a culpable manner. And thus, the first deposition of a ruler in late medieval England — comparable to the German one of 1298 — is fraught with procedural uncertainties. The enforced resignation, achieved by the threat of a break of fealty, proves, how unaccustomed to the procedures of deposition — as fixed by canon law and the canonists' doctrine — the rebellious barons still were, in spite of the canonistic structure of argument in the allegations⁽⁶⁾.

On the other hand, it is not surprising that in 1399, during the deposition of Richard II, the new opposition group was firmly guided by the success in the case of Edward. But now, one clung closely to the canonistic doctrine of deposition, seeking to turn Richard into a culpably useless king. Not least for this purpose, a commission of experts in canon

⁽⁶⁾ Ch. T. Wood, Personality, politics and constitutional progress, the lesson of Edward II, in: *Studia Gratiana* 15 (= Post Scripta), 1972, 519-536; N. Fryde, The tyranny and fall of Edward II, 1321-1326, Cambridge 1979; Ch.T. Wood, Celestine V, Boniface VIII, and the authority of parliament, in: *Journal of Medieval History* 8 (1982), 45-62.

law was formed, in order to deal with the proceedings with all juridical accuracy, materially and formally.

The result was the striking dichotomy of the procedures of 1399 that has so confused the English constitutional historians: that is, first the resignation of the king, and afterwards his deposition. By assuming a double strategy in the participants, however, seeing them equally guided by the precedent of 1327 and by canonical rule, the ambiguities that have hitherto baffled the English historians can be resolved⁽⁷⁾.

In his chronicle, the Oxford *doctor utriusque iuris* and practising canon lawyer Adam of Usk tells us that the commission, which he was a member of himself, was particularly guided by the deposition decretal of Innocent IV "*Ad apostolicae sedis*", to be found in the canon law book of the Liber Sextus. The wording of the 1399 verdict is indeed considerably influenced by this model. But the sentence of deposition is finally pronounced on the grounds of proven inutility, inability, insufficiency and unworthiness (*inutilitas, inabilitas, insufficientia, indignitas*). These, of course, are terms not taken from "*Ad apostolicae*" but from "*Grandi*". This textual problem is fading away, however, when you read Adam of Usk's notice in the way as any other contemporary canonist has to be understood: that is, the very text for any decretal in the Liber Sextus was always read together with the glosses of Johannes Andreae. Thus Adam of Usk and his colleagues used the connection of ideas and terms of the three decretals *Ad apostolicae*, *Grandi* and *Intellecto*, which was authorized by the famous Johannes Andreae⁽⁸⁾.

However, the fact that canon law required a *superior*, who alone was entitled to depose a king, was bound to present the commission with

⁽⁷⁾ Controversy: G.T. Lapsley, The parliamentary title of Henry IV, in: Engl. Hist. Rev. 49(1934), 423-429, 577-606; Id., Richard II's "last parliament", in: EHR 53(1938), 53-78; B. Wilkinson, The deposition of Richard II and the accession of Henry IV, in: Engl. Hist. Rev. 54(1939), 215-239; P. McNiven, Legitimacy and consent, Henry IV and the Lancastrian title 1399-1406, in: Mediaeval Studies 44(1982), 470-488.

⁽⁸⁾ Adam de Usk, Chronicon 1377-1421, ed. and transl. by E. M. Thompson, London ² 1904, 29 ff.; sentence (Sept. 30th, 1399): Rotuli Parliamentorum III (1767), 422; Cf. G.E. Caspary, The deposition of Richard II and the Canon law, in: Proceedings of the Second International Congress of Medieval Canon law, Citta del Vaticano 1965, 189-201.

some difficulty. The procedure chosen by the commission was intended to overcome this problem. To begin with, they made the king pronounce his own resignation, on the grounds of proven in — sufficiency and inutility to rule his realm. By this, the ruler simultaneously admitted that he had deserved his deposition, because he had to confess notoriously culpable conduct. The deposition that followed nevertheless, combines the views of the two decretals *Ad apostolicae* and *Grandi*, strictly after the model of the standard gloss of Johannes Andreae. The semi-official report, which was read at the first session of parliament summoned by Henry IV, justifies the deposition *pro maiori securitate et tranquillitate populi ac regni comodo faciendo*, that is with the fear that Richard II might later want to retract his resignation. Out of a similar apprehension, he was eventually murdered at Pontefract in January 1400 by the orders of Henry IV; just as Edward II had been killed, in spite of his resignation in favour of his successor, as an afterthought.

Other than in 1327, the estates in 1399 threatened no longer a break of fealty because of a foregoing breaking of the coronation oath; instead they now played an active part, and eventually — as representatives of the realm — deposed the king. The semi-official text here avoids with good reason a justification of the estates' necessary *superioritas* in relation to the king by arguments of corporate law. After all, the doctrines of the 14th century jurists on this matter were far too diverse. Instead the sentence of the estates is legitimized with an alleged old custom of the realm. Even if such a strategy was well suited to the English constitutional system, which was founded on common law, it could hardly conceal the estates' extension of competence in this case. But this solution to the legitimacy problem was obviously facilitated by the fact, that the estates declared their superiority over a king who had previously confessed himself culpable and unworthy. Here, too, the canonists may well have given some interpretative help. For during the Great Schism an old canonistic doctrine played an increasingly important part in the conciliar discussions, namely the doctrine that an obviously heretical pope made himself *ipso facto* unsuitable for his office, so that every good Christian would be his superior, especially a General Council, of course⁽⁹⁾.

⁽⁹⁾ Rotuli (n.8), 422; McNiven (n.7), 482ff; Walther, *Imp. Kgt.* (n.2), 205ff; *Id.*, *Legitimität* (n.1), 130ff.

About nine months after the events in England, the four Rhenish Electors, that is: the three archbishops of Moguntia, Cologne and Triers and the Count Palatinate, pronounced on the 21st of August 1400 a sentence of deposition over the Roman king Wenzel. A background analysis shows that this had originally not been their intention.

Since the spring of 1399, the four conspirators and their supporters had tried to instigate a movement of defection among princes and cities of the Empire. They seem to have had in mind a traditional overthrow of the ruler by means of a withdrawal of obedience. The negotiations with Pope Boniface IX were in all probability meant to achieve a papal dissolution of their oaths as sworn to the head of the Empire. Apparently they also toyed with the idea of appointing a curator for Wenzel. In any case, observers from German imperial cities claim to have heard of such plans as late as Juli 1400. Which would mean that the Rhenish bloc entertained the idea of a solution in the "*Grandi*" manner.

But in August 1400, the active nucleus of the opposition was once again reduced to the four Rhenish Electors. Their verdict against Wenzel was then founded on the king's notorious offences against the obligations of a ruler. Personal misdemeanor and grave damage done to the Empire were likewise listed in the six items of the indictment⁽¹⁰⁾.

The problem of the verdict of Oberlahnstein lay, as much as in the two English cases, not really in drawing up such accusations; but in legitimizing the jury's claim for superiority in relation to the king. A competence for depositions was not easily deducible from the traditional political status of the electors.

For much of the 14th century, learned theories on the College of Electors as a body corporate had been far in advance of the electors' political consciousness, not to speak of that of the other princes and estates. Emperor Charles IV's privilege for the electors, the so called "Golden Bull" of 1356/57, contained for the first time in an official document the stylisation of the electors as *pars corporis Caesaris*, analogous to the ancient relation of Emperor and Senate and the medieval one of Pope and

⁽¹⁰⁾ Reichstagsakten, Ältere Reihe (=RTA) 3, no.204 (sentence); H.G. Walther, Der gelehrte Jurist als politischer Ratgeber, Die Kölner Universität und die Absetzung König Wenzels 1400, in: Die Kölner Universität im Mittelalter (Miscellanea Mediaevalia 20), Berlin/New York 1989, 467-487 (summary of events).

Cardinals — which was an adoption of the learned theories of corporate law. In the second half of the 14th century, co responsibility of the electors for the Holy Roman Empire gradually prevailed, in consequence of their electoral function, no longer only in theory, but also in practical politics⁽¹¹⁾.

Wenzels's deposition, therefore, seems to mark a politically decisive step for the electors on the road from a privileged group towards an estate forming a body corporate, which claims copartner-ship in ruling the Empire — and, what we want to stress here: it was at the same time in the field of political theory even the last decisive step.

IV.

The verdict against Wenzel was obviously conceived and formulated with the assistance of learned counsellors. As matters stood, the Electors could not obtain a voluntary resignation of Wenzel. The compromise, apparently considered for some time, to appoint the Elector Rupert of the Palatinate as curator, fell through as well. Thus, the College of Electors had to be legitimized as jury of judges. The deposition verdict itself, as well as the documents of subsequent Palatin propaganda, give evidence to the legal basis of that proof: it was based on the "Golden Bull" of Charles IV.

But who suggested the possibility of appeal to that solemn privilege of the seven Electors in a case of deposition? Who was it that hereby proposed the co-responsability of the Electors' College — to be deduced from the Golden Bull by a learned interpretation in terms of corporate law — in order to solve the current constitutional problem?

In all probability, it was the learned jurist Job Vener from Strasburg. His interpretation of the Golden Bull procured him within a few weeks the position as learned counsellor at the Palatin court and chief of the chancery of the new king Rupert. Foregoing events made it clear that in all affairs touching the legitimacy of German kings, an intervention by the pope was surely to be expected. But now, Job Vener declared that the Electors' College owned a coporative status — as outlined in the Golden

⁽¹¹⁾ E. Schubert, *Die Stellung der Kurfürsten in der spätmittelalterlichen Reichsverfassung*, in: *Jb. f. westdt. Landesgesch.* 1(1975), 97-128; H.G. Walther, *Legitimität* (n.1), 118f.

Bull — and this should be a likewise sufficient basis for the dethronement of a king. Thus Job Vener stylized that half-forgotten diploma to the rank for the Empire's Fundamental Law, to the "Reichsgrundgesetz" how German constitutional juris were to speak of since then. Just as the election, the deposition of a king was thus made possible without the interference of the papal curia — in both cases at least in theory. But afterwards, and so did Rupert indeed after his election for Roman king, one might enter into negotiations with the Papal Curia, while looking for a suitable compromise to accept the new facts in the Empire⁽¹²⁾.

The constitutional crisis of 1400, which culminated in the king's deposition, necessitated the reception of one more new wave of learned theory. By application of the canonistic doctrine of the useless ruler, with its implied question of superiority, the conception of the Electors's College as a corporation grew a effectively politically established one. It took a skilled learned jurist as Job Vener — just as Adam of Usk and his colleagues in the English precedent — to recognize this inextricable link. But in order to put it into political practice, he had to be more than just a scholar with some political instincts, namely a learned counsellor at court in the place which was then the center of political decisions⁽¹³⁾.

More distinctly even than 1327 and 1399, the process of Wenzel's deposition in August 1400 reveals itself as one of those events that enable us to talk about the efficacy of learned political theories in the Late Middle Ages in more than general terms. Here, we can concretely determine the holders and mediators of those views, as well as boundaries of their political impact. The success of the deposition act of 1400 was enabled by

⁽¹²⁾ Job Vener and the Palalinate's Court: P. Moraw, *Kanzlei und Kanzleipersonal König Ruprechts*, in: *Archiv f. Diplomatik* 15(1969), 428-531, esp. 458ff.; H. Heimpel, *Die Vener von Gmund und Straßburg 1162-1447*, 3vol., Göttingen 1982, esp. 128ff., 175ff./688ff./677ff.

⁽¹³⁾ P. Moraw, *Beamtentum und Rat König Ruprechts*, in: *Zeitschr. f. Gesch. d. Oberrheins* 116(1968), 59-126; I. Männle, *Gelehrte Juristen im Dienst deutscher Fürsten im späten Mittelalter*, phil. Diss. (masch.) 1988; H. Boockmann, *Zur Mentalität spätmittelalterlicher gelehrter Räte*, in: *Histor. Zeitschr.* 233(1981), 295-316; P. Moraw, *Gelehrte Juristen im Dienst der deutschen Könige des späten Mittelalters*, in: *Die Rolle der Juristen bei der Entstehung des modernen Staates*, hg. v. Roman Schnur, Berlin 1986, 77-147; Walther, *Der gelehrte Jurist* (n.10), 485ff.

the Electors' readiness, especially Ruperts's of the Palatinate, to accept learned counsellors at their courts as well as their competence to solve practical questions of constitutional significance.